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RECENT IMPORTANT DECISIONS.

ADVERSE POSSESSION — PAPER TITLE — CONSTRUCTIVE POSSESSION — OCCUPANCY.—Defendants had no paper title to the land in controversy; but the land had been claimed by them and their vendors for thirty years, such claim being accompanied by occasional entries and the cutting of timber. There was also an actual possession for eight years by virtue of a mill erected by defendants' vendor. Defendants claim title by adverse possession against those who have perfect paper title but were never in actual possession. *Held,* legal title carries with it constructive possession, and such legal title owner may hold the land, without actual possession, against a junior title without following it up by actual possession; mere claim of title thereunder does not have the effect of defeating constructive possession and title of persons having senior legal title. *Ramsey* v. *Thomas* (1910), — Ky. —, 131 S. W. 11.

The doctrine of constructive possession is thus stated in *Jones* v. *McCauley's Heirs,* 2 Duv. 14: "There can be no constructive possession of the same land by conflicting claimants. In the absence of any actual possession, if there be any constructive possession, it must necessarily be in the owner of the best title, unless he had renounced it. And his constructive possession can never be ousted by any constructive possession claimed under the inferior title. * * * Nor will the statute of limitations run in favor of a mere constructive possession by the claimant under a junior patent." It was there held that a mere trespass, such as cutting timber, conducting a sugar camp, and allowing stock to range, do not in law constitute adverse possession. If the person claiming adversely is not in possession, possession follows the property in the land, and is in him who has the title. 3 WASHBURN, REAL PROPERTY, Ed. 5, 138; *Holley* v. *Hawley,* 39 Vt. 531; *Young* v. *Herdic,* 55 Pa. St. 172. In the principal case, the claim of the defendant was not strengthened by any mere claim of title made by their vendors after their possession of the mill site was surrendered. Likewise the occasional entries and the cutting of timber did not avail them. In order to defeat the claim of the holder of paper title, it is necessary to prove actual adverse and continuous possession on the part of another or his vendors for the complete statutory period before the institution of the action. *Brown* v. *Wallace,* (Ky.) 116 S. W. 763.

BANKRUPTCY—PROPERTY VESTING IN TRUSTEE—INSURANCE POLICIES WITH CASH SURRENDER VALUE ABSORBED BY A LIEN.—A bankrupt had life insurance policies with a cash surrender value of somewhat less than $15,000 at the time the trustee qualified. The insurance company which issued the policies had, shortly previous to the filing of the petition in bankruptcy loaned the bankrupt $15,370, taking the policies as collateral security. On the date that the trustee qualified the cash surrender value would have been completely absorbed by the lien of the insurance company, if surrendered. *Held,* that

the policies did not pass to the trustee. *Burlingham* v. *Crouse* (1910), — C. C. A. 2nd Cir. —, 181 Fed, 479.

The reason assigned for the holding of the court was, that as the bankrupt himself could obtain nothing by a surrender of the policies, there was nothing to pay to the trustee in place of the money obtainable from such surrender, and, that it would be contrary to the intent of Congress to hold, that under § 70 a of the Bankruptcy Act of 1898, the policies passed unless someone paid $15,000 to the trustee in addition to the $15,000 payable to the insurance company to release their lien. It is apparently well settled that all property of value belonging to the bankrupt passes to the trustee, under § 70 a of the Bankruptcy Act, including insurance policies which give to the insured bankrupt a vested or contingent property right. *In re Slingluff,* 5 Am. B. R. 76, 106 Fed. 154; *In re Coleman,* 14 Am. B. R. 461, 136 Fed. 818; *In re Orear,* 24 Am. B. R. 343, 178 Fed. 632. The converse of this proposition is equally well settled, viz., that if the insurance policy is of no actual value, and nothing can be realized, either by a surrender, or by a sale of the policy, there is nothing to pass to the trustee. *Gould* v. *N. Y. Life Ins. Co.,* 13 Am. B. R. 233, 132 Fed. 927; *In re Buelow,* 3 Am. B. R. 389, 98 Fed. 86, REMINGTON, BANKRUPTCY, § 1012. From such a proposition, the holding in the principal case easily follows. If the intent of Congress, with regard to the proviso of § 70 a, cl. 5, of the Act of 1898, allowing the redemption by the bankrupt, of policies with a cash surrender value, is that such proviso was enacted solely for the benefit of the unfortunate debtor, then undoubtedly the above holding is sound. It would certainly not aid the bankrupt's creditors to have such a policy pass to the trustee when its entire cash surrender value would be absorbed by the insurance company's lien. While on the other hand it would be inflicting a hardship upon the bankrupt to take from him the policies and force him, on account of his advanced age to run the risk of not being able to secure further insurance or at least having to pay a much higher premium. That the intent of Congress, in enacting the above proviso was to aid the unfortunate debtor, see, *In re Welling,* 7 Am. B. R. 340, 113 Fed. 189; *Holden* v. *Stratton,* 14 Am. B. R. 100, 198 U. S. 213; *Gould* v. *N. Y. Life Ins. Co.,* supra.

BANKRUPTCY — PROVABLE DEBTS — CONTINGENT CLAIMS — LANDLORD AND TENANT.—A lease provided that in case the lessee should become bankrupt the lease should terminate, the lessor should have a right to reenter and the lessee should pay the difference between the rent reserved in the lease, and the rent the lessor should by the use of due diligence be able to obtain under a new lease. The lessee became bankrupt and the petition was filed. Five months later a new lease was obtained at $525 less than the rent of the old lease. The loss for the five months was $1,250. The appellant presented a claim for $1,775 against the bankrupt estate. *Held,* that the claim was not provable. *In re Roth and Appel* (1910), — C. C. A. 2nd Cir. —, 181 Fed. 667.

Considering the above claim as contingent, it is certainly not provable under § 63 a of the Bankruptcy Act of 1898. *In re Mahler,* 5 Am. B. R. 457,